

B-23



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Laurence M. Simon,
Human Services Specialist 1
(C0073P), Ocean County Board of
Social Services

List Removal Appeal

CSC Docket No. 2015-139

ISSUED: MAR 10 2015

(LDH)

Laurence Simon appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found the appointing authority had presented a sufficient basis to remove the appellant's name from the Human Services Specialist 1 (C0073P), Ocean County Board of Social Services eligible list on the basis of his unsatisfactory criminal record.

The examination for Human Services Specialist 1 (C0073P) was announced with a closing date of January 2, 2012. The resultant eligible list of 134 candidates promulgated on June 7, 2012 and expires on June 6, 2015. In disposing of the May 8, 2013 certification, the appointing authority removed the appellant's name from the subject eligible list due to an unsatisfactory criminal history. In this regard, the appointing authority indicated the appellant's record evidenced two felony convictions in 2004 for conspiracy to defraud the United States and making false statements to the Securities and Exchange Commission (SEC). CPM upheld the decision of the appointing authority, finding that the appellant's criminal history adversely relates to the subject title.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the appointing authority requested the removal of his name, solely based on information he provided and he is therefore unfairly being "punished and savaged because of [his] honesty and openness." The appellant argues that he is rehabilitated and now leads a lawful, moral life. He contends that he has shown evidence of his rehabilitation in various aspects of his life. Specifically, he has satisfied the fines and penalties from his convictions and maintains that his

supervised release was terminated in May 2011. The appellant also asserts that he has given back to the community by becoming the Treasurer for his community's orchestra and local Boy Scout Troop. In addition, he has successfully had his certified public accountant license reinstated by the New Jersey State Board of Accountancy. He argues that the crimes he was convicted of were an isolated event and were the result of being threatened by the company's chief executive officer. In support, the appellant submits, *inter alia*, an Order of Reinstatement of Licensure from the New Jersey State Board of Accountancy, certificate of release of lien, letter confirming that restitution was paid in full, termination of supervision letter, resume, and various certificates of achievements.

In response, the appointing authority argues that the appellant's name should not be restored to the subject eligible list because of his unsatisfactory criminal record. The appointing authority contends that there is a direct negative nexus between the appellant's criminal activities and his unsuitability for employment as a Human Services Specialist 1. Specifically, it notes that the subject title has access to highly confidential information from different State/federal agencies including the Internal Revenue Service and the New Jersey Department of Labor. In addition, clients of the appointing authority provide financial and medical information to their case workers. The appointing authority argues that the appellant's criminal record evidences a willingness to compromise his integrity as well as his professional and ethical codes. Lastly, the appointing authority argues that the crimes are not an isolated event because the crimes happened over a period of 21 months. Thus, the appellant's criminal record adversely relates to employment as a Human Services Specialist 1 and his removal from the eligible list should be upheld.

In response, the appellant reiterates that he should have never been removed from the subject eligible list. The appellant asserts that the appointing authority's "robotic rhetoric and a regurgitation" of his criminal record demonstrates its "brilliant analysis" and he questions whether the appointing authority's "concern for adherence to the law" is taken into account as the "agency doles out significant taxpayer money to illegal aliens right and left – clear law breakers." Moreover, the appellant asserts that he is more likely to conduct himself honestly and truthfully due to his past and that the "same can't be said for [the appointing authority's] current employees who've never experienced adversity . . . and could be tempted to engage in bad behavior." The appellant contends that it is obvious that he could "intellectually . . . run circles around" most of the "buffoons" employed by the appointing authority and he states that he guesses "too many thinking employees would not be a good thing for all the handouts that have to be mustered to all those gaming the system." The appellant also indicates that he really does not "even want the stinking HSS1 job dealing with a bunch of non-producing takers of society, all of which is shrouded in 'compassion'." The appellant also, *inter alia*, refers to the employees of the appointing authority as "nitwits" and "dopes."

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for an appointment. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In this matter, a thorough review of the record indicates that the appellant's removal from the Human Services Specialist 1 (C0073P) eligible list would likely be unwarranted based solely on his criminal record. The Commission is cognizant of the gravity of the circumstances in which the crime occurred. In this regard, the appellant was 30 years old and was entrusted with the public's confidence as a licensed certified public accountant, when he intentionally and knowingly falsified documents filed with the United States and the SEC. Ultimately, the appellant was convicted of conspiracy to defraud the United States and making false statements to the SEC, was sentenced to 46 months in prison and fined \$5,000. The appointing

authority's argument that his convictions are not an isolated event as the charges stemmed from a 21 month period is unpersuasive. Though the conspiracy may have occurred over a 21 month period, the appellant was convicted of *one criminal incident*. However, the appellant has shown evidence of rehabilitation. In this regard, he has satisfied the fines and penalties from his convictions and successfully completed the terms of his probation in 2011. Also, he has integrated himself with his community as demonstrated by his involvement in civic groups and he has no further contact with law enforcement. Furthermore, the New Jersey State Board of Accountancy found that the public welfare would not be harmed when it reinstated the appellant's CPA license.¹ Thus, the appellant's rehabilitation weighs heavily against removal from the eligible list.

Additionally, the position in question is not a law enforcement title and is not subject to a heightened standard of review. *Compare Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966); and *In re Phillips*, 117 N.J. 567 (1990). The appointing authority's argument of a negative nexus between the appellant's criminal history and the subject title is unconvincing. Though a review of the job specification indicates that an individual in the subject title would have access to financial information, the access is minimal. Thus, the appointing authority has not sufficiently proven that the appellant's criminal history adversely relates to the subject title. Accordingly, the appellant's criminal record alone would not be a sufficient justification for removing his name from the eligible list for Human Services Specialist 1 (C0073P), Ocean County Board of Social Services.

However, although the appellant's criminal record would not, by itself, justify his removal from the eligible list, his appalling comments directed to the appointing authority and its clients make him an unacceptable candidate for employment with the appointing authority. In this regard, the appellant's submissions in this matter demonstrate his complete disdain and contempt for the appointing authority, its functions and its clients. Specifically, the appellant referred to the employees of the appointing authority as "nitwits," "dopes" and "buffoons." The appellant also referred to the appointing authority's clients as "illegal aliens," "law breakers" and "non-producing takers of society." The Commission notes that it is a privilege to serve as a public employee in New Jersey, not a right. *See State-Operated School District of Newark v. Gaines*, 309 N.J. Super. 327, 334 (App. Div. 1998). While the appellant's criminal record, by itself, would not have precluded him from that opportunity in this matter, his criminal record, coupled with his professed

¹In support, the appellant submitted an October 17, 2013 Order of Reinstatement of License, in which it noted that the appellant had testified under oath as to the circumstances of the crime, his remorse and his rehabilitation. The Board of Accountancy determined that the public welfare would be sufficiently protected subject to certain conditions. Those conditions include that he was not permitted to sign off on any compilations or financial statements for a period of one year, and the Board of Accountancy had the sole discretion to suspend the appellant's license should the appellant fail to comply with the conditions of the Order.

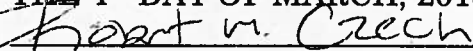
intolerance for the mission of the appointing authority supports his removal from the list.² A review of the job specification for a Human Service Specialist 1 reveals that an individual in that title does the field and office work involved in the collection, recording, analysis, and evaluation of data, to include the employability, the medical status and the physical or mental health of applicants/clients, for the purpose of determining applicants'/clients' eligibility for program services; provides information to families and individuals to achieve self-sufficiency through employment opportunities and/or child support services; and does related work. The appellant's stated disdain for the appointing authority and its clients is clearly at odds with the duties of this position. Accordingly, based on the foregoing, the appellant has not satisfied his burden of proof.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4th DAY OF MARCH, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Laurence Simon
Linda Murtagh
Kenneth Connolly

² The Commission also notes that it could have removed the appellant's name from the list solely for his indication that he did not "want the stinking HSS1 job." In this regard, *N.J.A.C.* 4A:4-4.7(a)3 states that an eligible may be removed from a list for inability, unavailability or refusal to accept appointment.



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 314
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

June 16, 2014

Laurence Simon


Jurisdiction: Ocean County Bd of Soc Svcs
Title: Human Services Specialist 1
Symbol: C0073P
Certification No: OL130628
Certification Date: 05/08/13

Initial Determination: Removed – Unsatisfactory Criminal Record

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-4.7(a)4, which permits the removal of an eligible candidate's name from the eligible list if "The eligible has a criminal record which adversely relates to the employment sought".

In support of its decision, the Appointing Authority provided documentation which indicates you pled guilty to crimes including Conspiracy to Defraud the United States and Making False Statements to the Securities and Exchange Commission. The decision to remove your name is at the discretion of the Appointing Authority; the documentation submitted by the Appointing Authority to the Civil Service Commission was sufficient to justify their decision to remove your name from the eligible list.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been sustained and the appeal is denied.

In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

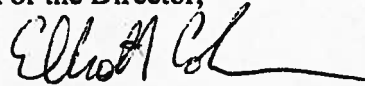
Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et

seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,

A handwritten signature in black ink, appearing to read "Elliott Cohen", with a long horizontal flourish extending to the right.

Elliott Cohen
Human Resource Consultant
Local Placement Services

Linda Murtagh, Director
Ocean County Board of Social Services
PO BOX 547
Toms River, NJ 08754-0547